

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2340 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

N J JOSEPH

Versus

COMMISSIONER OF FISHERIES

Appearance:

MR PS PATEL for Petitioner

SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 07/11/96

ORAL JUDGEMENT

By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner seeks direction to release the impugned increment w.e.f. 1.3.1984. The petitioner was appointed as Statistical Invstigator on 5.8.1961. Thereafter, he was promoted as Fisheries Officer and subsequently as Survey Assistant in the year 1971. The petitioner thereafter was promoted as Superintendent of Fisheries (Gazetted) in the year 1975. The State of Gujarat had framed Rules in exercise of proviso of Article 309 of the Constitution of India,

known as "The Gujarat Government Servants (Lower & Higher Standard Gujarati Language Examination) Rules, 1970. These rules have been made applicable to all Gazetted and Non-gazetted government servants except Class IV employees whose mother tongue is not Gujarati or whose mother tongue is Gujarati, who may have received their secondary education in English or any medium other than Gujarati appointed to posts and services under the state nomination or by promotion on or after 1.5.1960. and to those Government servants of the former States of Bombay, Hyderabad, Kutch, Madhya Pradesh and Saurashtra who have been allocated either is localised or non-localised posts, whose mother-tongue is not Gujarati or whose mother-tongue is Gujarati, but who may have received their secondary education in English or any medium other than Gujarati and who were required to pass but have not passed Gujarati Language Examination or have not been exempted from passing Gujarati Language Examination under the Rules of the former States of Bombay, Hyderabad, Kutch, Madhya Pradesh and Saurashtra, if any, or an equivalent examination specified in proviso (iii) to clause (c) of Rule 4

3. It is submitted that the increment of the petitioner was due on 1.3.1984, but the same was stopped without assigning any reason. It is thus contended that the act of the respondent in stopping the increment without any reason is ex-facie illegal and arbitrary.

4. This Court by order dated 29.3.1985 issued Rule returnable in the last week of November 1985. The Court also granted interim relief in terms of para 16(C) which reads as under:

"(C) during the pendency and final hearing of this petition restrain the respondents from deducting the amount of increment which are due from year to year from their monthly salaries, and further direct them to release the arrears of salaries due because of stoppage of increments immediately."

No reply has been filed by the respondent-State. I have heard the learned Advocate for the petitioner and perused the petition. There appears to be no reason for stopping the increment. Even if it is assumed that the increment was stopped for not passing the Gujarati Language Examination, it was necessary to give a show cause notice and pass appropriate order thereafter.

5. Thus, in my view, the act of the respondent in

stopping the increment is unilaterally and ex-facie illegal. I am also informed that the petitioner has retired on 31.10.1995.

6. In view of the aforesaid, this Special Civil Application is allowed and the interim relief passed by this court on 29.3.1985 is made absolute. Rule made absolute accordingly.

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